

1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT PART 8

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
5 -against- 167N-2005
6 MARK ORLANDO, MURDER 2
TRIAL

7 Defendant.

8 - - - - -X

9 262 Old Country Road
10 Mineola, New York
11 June 7, 2005

12 B e f o r e:

13 HON. DAVID P. SULLIVAN, Supreme Court Justice

14 A p p e a r a n c e s:

15
16 HON. DENIS DILLON
17 District Attorney, Nassau County
By: ROBERT T. HAYDEN, ESQ.
18 Assistant District Attorney

19
20 DENNIS LEMKE, ESQ.
Attorney for Defendant
21 114 Old Country Road
Mineola, New York

22
23 Mary Ocskai
24 Official Court Reporter

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Proceedings

1 THE CLERK: Remain seated, come to order.
2 County Court Part VI now in session, David P Sullivan
3 presiding.

4 Good morning, Judge.

5 THE COURT: Mr. Lemke, for purposes of what I
6 am about to put on the record, you're waiving your
7 client's appearance?

8 MR. LEMKE: Yes, I do, Your Honor.

9 THE CLERK: Continued case on trial,
10 indictment 167N-05.

11 May we have the People's appearance for the record,
12 please.

13 MR. HAYDEN: Robert T. Hayden, Your Honor.
14 The People are ready.

15 THE CLERK: Representing Mr. Orlando.

16 MR. LEMKE: Dennis Lemke, Your Honor, 114 Old
17 Country Road, Mineola, New York.

18 Also ready, Your Honor.

19 THE COURT: As you know this Court has been
20 ready, has stood ready since nine a.m. this morning to
21 resume the trial. One of the jurors has still not
22 arrived. I am putting this on the record at this point
23 because pursuant to Criminal Procedure Law 270.35, if
24 this juror cannot be found and does not show up, the
25 Court intends to replace her.

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1 So, what I am going to do is take a fifteen minute
2 recess. All the people in the gallery, get coffee,
3 whatever. I want to keep you apprised of what is
4 happening.

5 Thank you.

6 (Whereupon, there was a recess in the proceedings.)

7 (Whereupon, the following takes place in chambers.)

8 THE COURT: Continued trial. Mr. Lemke is
9 present and the Assistant District Attorney, as well as
10 juror number five, Raffat Hayat.

11 Mr. Lemke, do you waive your client's
12 appearance for this?

13 MR. LEMKE: Absolutely, yes.

14 THE COURT: Ma'am, suppose to be here nine
15 o'clock today held up a trial.

16 THE WITNESS: Extremely sorry. I have major
17 construction in the house, and something happened that
18 needed my attention there. I was already to come and
19 there was no one else in the house who could address
20 that so, I was late thirty minutes leaving home, it took
21 me thirty minutes to come here, then another thirty
22 minutes to park the car.

23 So, I am extremely sorry for that.

24 THE COURT: No problem. This is the problem
25 though. As you know we have a trial. We have other

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1 jury members. They all have been here since around nine
2 o'clock. And as you can see a courtroom full of
3 people. So, I can't hold up the trial if you're late
4 like that. And, technically, with the commissioner of
5 jurors you can be held in contempt. I am not looking to
6 do that. I don't want to do that to you. Okay.

7 Now, are you going to have a problem anymore because
8 if do you --

9 THE WITNESS: I don't foresee otherwise I
10 would have said up front when I was picked up as a
11 juror. I think I should be able to.

12 THE COURT: I just have to admonish you
13 because if you fail to come or fail to contact us and we
14 don't know what is going on, I will be forced to
15 discharge you from the jury. Okay?

16 THE WITNESS: All right.

17 THE COURT: We know, we spent a lot of time
18 trying to get a fair and impartial juror. I know both
19 parties want you on the jury. So, but you have to
20 understand the ramifications. It's serious business and
21 I can't keep everybody held up. Okay. If we stay on
22 our time schedule I hope to be done early next week, way
23 before I, way before we anticipated. Okay.

24 You provided your cell number to the court officer.

25 THE WITNESS: Yes.

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1 THE COURT: Make sure you have our number.
2 All right. So you have to be on time from now on.

3 THE WITNESS: Yes.

4 THE COURT: Any question, counsel?

5 MR. HAYDEN: No.

6 MR. LEMKE: No.

7 THE COURT: You can go with the officer.

8 (Whereupon, the following takes place outside the
9 presence of the juror.)

10 THE COURT: We're going to resume the trial in
11 a couple of minutes.

12 (Whereupon, there was a brief recess.)

13 THE CLERK: This is the continued case on
14 trial, indictment 167N-05, People versus Mark Orlando.
15 People ready.

16 MR. HAYDEN: Ready, Your Honor.

17 THE CLERK: Defendant ready?

18 MR. LEMKE: Defendant ready.

19 THE CLERK: Jury's not present. The defendant
20 is present at this time.

21 THE COURT: Mr. Hayden, you had additional
22 Rosario you wanted to put on the record.

23 MR. HAYDEN: Yes, I do, Your Honor.

24 I turned over to Mr. Lemke earlier this morning
25 copies of Rosario 110, 111 and 112. I also have a copy

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1 for the Court with a revise Rosario list which I would
2 ask be marked as a Court exhibit.

3 THE COURT: Mr. Lemke.

4 MR. LEMKE: Acknowledge receipt, Your Honor.

5 THE COURT: Court exhibit X.

6 Anything further before the jury re-enters the
7 courtroom?

8 MR. HAYDEN: No.

9 MR. LEMKE: Nothing, Your Honor.

10 THE COURT: Ready for the jury.

11 THE COURT OFFICER: Jury entering.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Mr. Lemke, Mr. Hayden, I have a
15 juror note. I am this marking Court exhibit XI.

16 "How many times can a juror be late for non
17 emergency before choosing an alternate?"

18 I will informed the jury we have addressed the
19 situation, and they're not to concern themselves with
20 that any further. And as I already made a record and
21 admonished that juror and if there's a further lateness
22 the Court intends to discharge that juror.

23 MR. HAYDEN: Yes.

24 THE COURT: I won't tell them all that. Just
25 telling them we're aware of the problem and we have

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1 addressed it.

2 MR. LEMKE: Yes, Your Honor.

3 THE COURT OFFICER: Jury entering.

4 THE CLERK: Continued case on trial,
5 indictment 167N-2005, People of the State of New York
6 versus Mark Orlando.

7 Again, People ready?

8 MR. HAYDEN: Ready, Your Honor.

9 THE CLERK: Defense ready?

10 MR. LEMKE: Defense ready.

11 THE CLERK: Let the reflect the presence of
12 Mr. Orlando, the sworn jurors and the alternates
13 jurors.

14 When you hear your name called, answer up.

15 Patricia Bologna.

16 A JUROR: Here.

17 THE CLERK: Aileen Nathan.

18 A JUROR: Here.

19 THE CLERK: Louis Quaglia.

20 A JUROR: Here.

21 THE CLERK: Raffat Hayat.

22 A JUROR: Here.

23 THE CLERK: Sally Turrillbarnes.

24 A JUROR: Here.

25 THE CLERK: Michael Kirkby.

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1 A JUROR: Here.

2 THE CLERK: Thomas Scarfo.

3 A JUROR: Here.

4 THE CLERK: Christopher Delaney.

5 A JUROR: Present.

6 THE CLERK: Jennifer Eichstaedt.

7 A JUROR: Here.

8 THE CLERK: Robert Herrera.

9 A JUROR: Here.

10 THE CLERK: Anthony DiSalvo.

11 A JUROR: Here.

12 THE CLERK: Marie Ginobbi.

13 A JUROR: Here.

14 THE CLERK: Ora Jenkins.

15 A JUROR: Here.

16 THE CLERK: Jennifer Zuzio.

17 A JUROR: Here.

18 THE CLERK: And Joseph Tiriro.

19 A JUROR: Here.

20 THE CLERK: Jurors are present and accounted
21 for.

22 THE COURT: Ladies and gentlemen of the jury,
23 good morning. Thank you for your patience.

24 The Court has received a note from the jury marked
25 as Court exhibit XI.

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1 With respect to that question, the Court is aware of
2 the problem. The Court has addressed the problem with
3 the juror in question, and if there's any further
4 problems in that regard, then the Court will take action
5 with respect an alternate. Okay.

6 Now, there's been some talk that some people want to
7 take notes during the course of the trial. Is that
8 correct?

9 A JUROR: Yes.

10 THE COURT: So, if anyone that wants to have a
11 pad and take notes just raise your hands, we will give
12 them out to you right now. Then I am going to give you
13 a charge with respect to note taking before we
14 continue. Okay.

15 Anyone who didn't take a pad and changes their mind
16 during the course of the trial just let us know,
17 please.

18 You must follow these rules with respect to note
19 taking.

20 Any note taking are only an aid to your memory and
21 must not take precedence over your independent
22 recollection. Those jurors who has chosen to take notes
23 must rely on their own independent recollection and must
24 not be influenced by any notes that another juror may
25 take. Any notes you take are only for your own personal

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1 use in refreshing your recollection. Notes serve merely
2 as an aid to the juror's memory. They are in no way
3 superior to a juror's recollection.

4 Notes may not be used as an authority to dissuade
5 your fellow jurors of what a particular witness did or
6 did not say. A juror's notes are not a substitute for
7 the recorded transcript of the testimony or for any
8 exhibit received in evidence. If there's a discrepancy
9 between a juror's recollection and his or her notes
10 regarding the evidence, you should ask to have the
11 relevant testimony read back, or the exhibit produced in
12 the jury room.

13 In addition, a juror's notes are not a substitute
14 for the detailed explanation I will give you of the
15 principles of law that govern this case. If there's a
16 discrepancy between a juror's recollection and his or
17 her notes regarding those principles, you should ask me
18 to explain those principles again and I will be happy to
19 do so.

20 Any notes taken are confidential and shall not be
21 available for examination or review by any party or
22 other person. After the jury has rendered its verdict
23 we will collect the notes and destroy them. Each day
24 when we break, you will leave them here and they will be
25 collected by the clerk.

Proceedings

1 Mr. Hayden, ready to proceed?

2 MR. HAYDEN: Yes, Your Honor.

3 THE COURT: Please call your next witness.

4 MR. HAYDEN: Vincent Buscemi.

5 VINCENT BUSCEMI, detective/lieutenant called as a witness on
6 behalf of the People, after having been first duly
7 sworn, and having stated his shield number as 1011, and
8 his command as the Long Beach Police Department, took
9 the witness stand and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HAYDEN:

12 THE CLERK: Have a seat. State your name,
13 spell your last name, give your shield number and
14 command.

15 THE WITNESS: Detective Lieutenant Vincent
16 Buscemi, B-U-S-C-E-M-I, Long Beach Police Department.
17 My shield number 1011.

18 Good morning, Your Honor.

19 MR. HAYDEN: Yes, Your Honor.

20 Q. Good morning.

21 A. Good morning, sir.

22 Q. How long have you been a member of the Long Beach
23 Police Department?

24 A. Approximately twenty-six years.

25 Q. Did you know a young man named Bobby Calabrese?

1 A. Yes, I did.

2 Q. Is Bobby dead?

3 A. Yes, he is.

4 Q. How old was Bobby when he died?

5 A. He was twenty-four years old.

6 Q. How long had you known Bobby?

7 A. I've known Bobby his whole life. I have been
8 friends with his father and his mother for over thirty-five
9 years.

10 Q. I am directing your attention to Sunday, December
11 5, 2004.

12 Did you see Bobby that day?

13 A. Yes, I did.

14 Q. Where was Bobby when you saw him that day?

15 A. He was in the Nassau County morgue.

16 Q. Describe the circumstances under which you saw
17 Bobby that day?

18 A. I had gone to the morgue to identify him.

19 Q. Did you do that?

20 A. Yes, I did.

21 Q. Describe the circumstances under which you
22 identified Bobby's body?

23 A. I had been asked by members of his family if I
24 would please go over to the morgue and identify their son.

25 Q. When did you last see Bobby alive?

Buscemi - People - Direct

1 A. It was about the summer of 2004.

2 Q. Had Bobby been a wrestler?

3 A. Yes, he had.

4 Q. How good?

5 A. He was state champion in Kellenberg High School.

6 Q. Describe any observation you made of Bobby's
7 physical condition when you last saw him alive?

8 A. He was a vibrant athletic, well muscled, beautiful
9 young man.

10 MR. HAYDEN: May I please have 25 for
11 identification shown to the witness, Your Honor.

12 THE COURT: Yes.

13 THE COURT OFFICER: Witness has 25 for ID.

14 Q. Do you recognize that?

15 A. Yes, I do.

16 Q. Is that a photograph of Bobby Calabrese?

17 A. Yes, it is.

18 Q. Is that a fair and accurate representation of the
19 way Bobby appeared when you last saw him in the summer of
20 2004?

21 A. Yes.

22 Q. Is that a fair and accurate representation of his
23 build?

24 A. It is.

25 MR. HAYDEN: Your Honor, the People offer that

COPY

Buscemi - People - Direct

1 photograph in evidence.

2 THE COURT: Please show it to Mr. Lemke.

3 MR. LEMKE: We have seen it. No objection.

4 THE COURT: Mark it in People's 25 in
5 evidence.

6 THE COURT OFFICER: People's exhibit 25 marked
7 in evidence.

8 MR. HAYDEN: Your Honor, may I please have
9 that passed among the jury.

10 THE COURT: Yes.

11 THE COURT OFFICER: People's 25 in evidence
12 has been published to the jury.

13 MR. HAYDEN: Nothing further, Your Honor.

14 THE COURT: Thank you, Mr. Hayden.

15 MR. LEMKE: May I, Your Honor?

16 THE COURT: Yes, Mr. Lemke

17 CROSS EXAMINATION

18 BY MR. LEMKE:

19 Q. Good morning.

20 Is it Mr. Buscemi or is it Detective Buscemi?

21 A. Lieutenant.

22 Q. Lieutenant. As you're testifying here today, you
23 didn't have any role in the investigation of the death of
24 Bobby Calabrese, did you?

25 A. No, I did not.

Buscemi - People - Cross

1 Q. So, you're here as a civilian testifying here
2 today?

3 A. I was subpoenaed as a police officer.

4 Q. Subpoenaed as a police officer.

5 Well, you were not involved with the investigation,
6 correct?

7 A. That's correct.

8 Q. And, when you went to make the identification of
9 Bobby Calabrese, you didn't go as a police officer but as a
10 family friend, correct?

11 A. That's correct.

12 Q. So, you're here testifying as a civilian. You had
13 no authority as a police officer or lieutenant in the
14 investigation, correct?

15 A. That is correct.

16 Q. But yet you have your shield in your jacket today;
17 is that correct?

18 A. Yes, it is.

19 Q. Any reason for that?

20 A. I am a on-duty police officer.

21 MR. HAYDEN: Objection.

22 THE COURT: Sustained. Strike that and
23 disregard it.

24 Q. You're here as a civilian testifying, correct, not
25 as a lieutenant, correct?

Buscemi - People - Cross

1 A. Today I am a an on duty police officer.

2 Q. But regarding your testimony here today, it wasn't
3 as your official duties regarding the investigation of Bobby
4 Calabrese; isn't that correct, Lieutenant?

5 A. Yes, that is correct.

6 Q. And you now testified that you know Bobby Calabrese
7 for many years; isn't that correct?

8 A. Yes.

9 Q. And, you remember his height. Is he about 5'7"?

10 A. 5'7", 5'8".

11 Q. And, his weight was 160 pounds; isn't that
12 correct?

13 A. Yes.

14 Q. And, did you also know he was uninvolved with
15 illegal activity?

16 A. No, I did not.

17 Q. You didn't know he was involved with gambling,
18 correct?

19 A. That is correct. I did not know.

20 Q. You didn't know he was a runner regarding gambling,
21 correct?

22 A. I did not know.

23 MR. LEMKE: I have nothing further. Thank
24 you.

25 MR. HAYDEN: Nothing, Your Honor.

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Nystrom - People - Direct

1 THE COURT: Thank you.

2 (Witness excused.)

3 MR. HAYDEN: Detective Nystrom.

4 DAVID R. NYSTROM, detective, called as a witness on behalf of
5 the People, after having been first duly sworn, and
6 having stated his shield number as 887, and his command
7 as Crime Scene Unit, Nassau County Police Department,
8 took the witness stand and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HAYDEN:

11 THE CLERK: Is it detective?

12 THE WITNESS: Yes.

13 THE CLERK: Have a seat.

14 State your name, spelling your last name, give your
15 shield number and command.

16 THE WITNESS: My name is Detective David R.
17 Nystrom, N-Y-S-T-R-O-M, shield 887.

18 THE COURT: Good morning.

19 Mr. Hayden.

20 Q. Good morning, detective.

21 A. Good morning.

22 Q. How long have you been a member of the Nassau
23 County Police Department?

24 A. Nineteen years.

25 Q. How long have you been a detective?

Nystrom - People - Direct

1 A. Two years.

2 Q. How long with crime scene?

3 A. Three and-a-half years.

4 Q. Briefly describe your duties with crime scene?

5 A. Crime scene we respond to crime scenes to document,
6 through photography, video, and sketching. We locate,
7 collect and package evidence at the scenes to be processed.

8 Q. Directing your attention to around nine o'clock on
9 the night of Friday, December 3, 2004.

10 Were you working then?

11 A. Yes, I was.

12 Q. Describe the weather that night?

13 A. It was cold and it was windy.

14 Q. Were you notified at around nine that night to
15 respond to the vicinity of Broadway, south of Georgia Avenue
16 in North Long Beach?

17 A. Yes, I was.

18 Q. Is that in Nassau County, state of New York?

19 A. Correct.

20 Q. Did you respond to that location?

21 A. Yes, I did.

22 Q. When did you arrive?

23 A. It was approximately 10:20.

24 Q. Describe the area?

25 A. It's a commercial area. Broadway runs south off

Nystrom - People - Direct

1 Georgia Avenue which is adjacent to Austin Boulevard which is
2 a main thoroughfare. The area is a commercial area, lightly
3 traveled at night, poorly lit.

4 Q. Was there a 7-Eleven in that area?

5 A. Yes.

6 Q. Where was the 7-Eleven?

7 A. In reference to, it's at the intersection of Austin
8 Boulevard, Georgia Avenue and Broadway.

9 Q. Describe the lighting?

10 A. Poor.

11 Q. Did you see an automobile when you arrived?

12 A. Yes, I did.

13 Q. Describe it?

14 A. It's a gray Infiniti, four door sedan, lights on
15 and running.

16 Q. Engine was running?

17 A. Yes.

18 Q. Where was the Infiniti?

19 A. It was parked on the east side of Broadway, facing
20 north, and about sixty feet south of the 7-Eleven store.

21 Q. Was that Cadillac in the vicinity of the Infiniti?

22 A. Yes.

23 Q. Where was the Cadillac?

24 A. That was about sixty feet south of the Infiniti on
25 the same side of the roadway.

Nystrom - People - Direct

1 Q. Did you see a young man name Bobby Calabrese when
2 you arrived in that vicinity?

3 A. Yes, I did.

4 Q. Where was Bobby Calabrese?

5 A. He was lying face down in the roadway, just south
6 west of his vehicle.

7 Q. What was he wearing?

8 A. Gray sweats.

9 Q. Describe any observations you made of Bobby
10 Calabrese when you saw him then?

11 A. Again he was lying face down in the roadway, his
12 arms were up, around his head and there appeared to be
13 multiple gunshots to the back of his head.

14 Q. Describe any observations you made of the sweat
15 shirt?

16 A. The sweat shirt was cut, and there were a couple of
17 bullet holes in the back of the sweat shirt.

18 Q. Where was it cut?

19 A. Up the center. The sweat shirt was also pulled up
20 around his head and neck area.

21 Q. Was any money recovered from Bobby's clothing?

22 A. Yes, there was a \$20 bill from his right front
23 pocket.

24 Q. Were those sweat pants?

25 A. Yes.

Nystrom - People - Direct

1 Q. Was any money recovered from Bobby's vicinity?

2 A. No.

3 Q. Was any weapon recovered from Bobby's clothing?

4 A. No.

5 Q. Was any weapon recovered from Bobby's vicinity?

6 A. No.

7 Q. Was any money recovered from the Infiniti while it
8 was there at the scene?

9 A. No.

10 Q. Was any money recovered in the vicinity of the
11 Infiniti?

12 A. No.

13 Q. Was any weapon recovered from the Infiniti?

14 A. No.

15 Q. Was any weapon recovered from the, in the vicinity
16 of the Infiniti?

17 A. No.

18 Q. Did you photograph the vicinity where you saw Bobby
19 Calabrese's body?

20 A. Yes, I did.

21 MR. HAYDEN: Your Honor, may I please have
22 these ten photographs which have been marked 1 through
23 10 shown to the witness.

24 THE COURT: Yes.

25 THE COURT OFFICER: Witness has People's 1

Nystrom - People - Direct

1 through 10 for identification.

2 Q. Do you recognize those photographs?

3 A. Yes, I do.

4 Q. Are those photographs you took while you were in
5 the vicinity of Broadway and Georgia Avenue that Friday
6 night?

7 A. Yes.

8 Q. Are those photographs fair and accurate
9 representations of the way that vicinity appeared while you
10 were there that Friday night?

11 A. Correct.

12 MR. HAYDEN: People offer those, Your Honor,
13 as 1 through 10 in evidence.

14 MR. LEMKE: I don't believe I will have an
15 objection but brief voir dire, please.

16 THE COURT: Yes.

17 Voir dire EXAMINATION

18 BY MR. LEMKE:

19 MR. LEMKE: Detective on December 3, 2004, you
20 told this jury you took these photographs.

21 THE WITNESS: Yes.

22 MR. LEMKE: When you arrived, you weren't the
23 first detective or officer at the scene; is that
24 correct?

25 THE WITNESS: That's correct.

Nystrom - People - Direct

1 MR. LEMKE: In fact, in some of these items
2 which have been marked for identification purposes, 1
3 through 10, there is a sweat shirt that is cut that is
4 depicted in this photograph; is that correct?

5 THE WITNESS: Yes.

6 MR. LEMKE: You did not cut that sweat shirt
7 yourself, did you?

8 THE WITNESS: No, I didn't.

9 MR. LEMKE: In fact, there is also a T-shirt
10 that is depicted in these photographs; is that correct?

11 THE WITNESS: Yes.

12 MR. LEMKE: And, that T-shirt is not cut,
13 correct?

14 THE WITNESS: That's correct.

15 MR. LEMKE: And when you arrived there at the
16 scene, there were other police officers there before
17 you, correct?

18 THE WITNESS: Yes.

19 MR. LEMKE: How many were there?

20 THE WITNESS: The exact number I couldn't tell
21 you, ten, twelve people.

22 MR. LEMKE: So, there's been at least ten or
23 twelve people there and the T-shirt that you took the
24 photograph of was not cut, correct?

25 THE WITNESS: That's correct.

Nystrom - People - Direct

1 MR. LEMKE: And it wasn't pulled over his head
2 correct, was it?

3 THE WITNESS: No.

4 MR. LEMKE: And the sweat shirt itself has a
5 hood; isn't that correct.

6 THE WITNESS: Yes.

7 MR. LEMKE: And the hood itself was not cut,
8 was it.

9 THE WITNESS: I believe it's partially cut.

10 MR. LEMKE: Okay. Well, could I have this --
11 well, first of all, if People's 5 for identification
12 could be shown to the witness for a second.

13 THE COURT: Yes.

14 THE COURT OFFICER: The witness has
15 People's 5.

16 MR. LEMKE: You took that photograph,
17 correct?

18 THE COURT OFFICER: Yes.

19 MR. LEMKE: That is a fair depiction as to the
20 manner in which the sweat shirt was cut up to the hood;
21 isn't that correct?

22 THE WITNESS: Yes.

23 MR. LEMKE: Okay. And, in fact, the hood was
24 still over his head, correct?

25 THE WITNESS: The way you see it in the

Nystrom - People - Direct

1 picture is the way it was when I got there.

2 MR. LEMKE: Okay. So, that would be self
3 explanatory, correct?

4 THE WITNESS: Correct.

5 MR. LEMKE: I have no objection to these
6 photographs going into evidence.

7 THE COURT: Please mark them in as People's 1
8 through 10 in evidence.

9 THE COURT OFFICER: People's exhibit 1 through
10 10 have been marked in evidence.

11 MR. HAYDEN: Your Honor, with the Court's
12 permission, may I present these to the jurors using the
13 presenter and have Detective Nystrom describe what each
14 depicts.

15 THE COURT: Yes.

16 Detective, please step down and stand to the right
17 of that presenter.

18 Q. Now placing one on the presenter.
19 Please describe what that photograph depicts?

20 A. This photograph shows Broadway looking south.
21 7-Eleven store up on my right hand side here. The light you
22 see in the picture is from our Nassau County police light
23 truck to illuminate the scene so we can process the scene.
24 This is Bobby Calabrese's Infiniti. This is him lying in the
25 roadway. And this is the Cadillac that was mentioned before

Nystrom - People - Direct

1 parked about sixty feet south of the Infiniti.

2 Q. I am now placing 2 on the present.

3 Please describe what that depicts?

4 A. That is the same depiction just a little bit closer
5 showing again the Infiniti, Bobby Calabrese in the roadway,
6 the Cadillac. And this is Broadway looking south.

7 Q. I am now placing 3 on the presenter.

8 Describe what that depicts?

9 A. That's Broadway south again, the Infiniti
10 headlights are on. Bobby Calabrese in the roadway. As you
11 can see he is just southwest of his vehicle to the rear of
12 the vehicle.

13 Q. I am now placing 4 on the presenter.

14 Please describe what that depicts?

15 A. This is Bobby Calabrese in the roadway face down.
16 His arm up above around his head. Blood in the roadway. And
17 this is looking west across Broadway from the east curb
18 line. And the Infiniti would be over here to the northeast
19 of him.

20 Q. I am now placing 5 on the presenter.

21 A. This is a closer photo, same direction, looking
22 west across the roadway, his arms here, the cut in the sweat
23 shirt which was mentioned before.

24 Q. I am now placing 6 on the presenter.

25 A. This is looking south in the direction south on

Nystrom - People - Direct

1 Broadway at the back of Bobby's lead. And you can see two
2 gunshot wounds to the back of his head. His arms up above
3 his head.

4 Q. I am now placing 7 on the presenter.

5 A. This photo is looking across Broadway. As you can
6 see the Infiniti, Bobby's car again. Bobby Calabrese in the
7 roadway, Broadway. And this is the 7-Eleven that was
8 mentioned. This is Broadway going north in this direction,
9 and Georgia Avenue runs east/west at the top of the block of
10 7-Eleven.

11 Q. I am now placing 8 on the presenter.

12 A. Okay. This is south of the scene, looking
13 northbound on Broadway. Again, Bobby Calabrese in the
14 roadway. His vehicle parked on the east side curb line.

15 Q. I am now placing 9 on the presenter?

16 A. Same direction photo just a little bit back further
17 to give you a better perspective. This is Broadway looking
18 north. Bobby Calabrese in the roadway. His Infiniti on the
19 east curb line. And this is Nassau County police light truck
20 illuminating the roadway.

21 Q. I am now placing 10 on the presenter.

22 Describe what that depicts.

23 A. This is a photo of Bobby Calabrese sweat shirt
24 depicting blood holes with a scale which I placed for
25 measurement purposes.

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1 Q. Please retake the witness stand.

2 Was a part of the bullet recovered at the scene of the
3 shooting?

4 A. Yes, there was.

5 Q. Describe the part of the bullet?

6 A. There's a lead core of the bullet and a copper
7 jacketing which surrounds the bullet.

8 Q. When you say bullet, are you talking about the
9 projectile?

10 A. Correct.

11 Q. The part of a cartridge that comes out through the
12 muzzle of a barrel?

13 A. Yes.

14 Q. What part of the bullet recovered at the scene of
15 the shooting?

16 A. A copper jacketing.

17 Q. Who first noticed that copper jacket?

18 A. That was Dr. O'Reilly from the medical examiner's
19 office.

20 Q. Describe what happened when he noticed it?

21 A. Upon completion of my processing of the scene and
22 his examination of Bobby's body, he turned the body over and
23 was feeling through the blood on the roadway and the front of
24 Bobby's body and recovered the copper jacket on the front of
25 his sweat shirt.

MO

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1 Q. What happened then?

2 A. He recovered it off the sweat shirt and turned it
3 over to me.

4 Q. What did you do with it?

5 A. I packaged it in a plastic box, then into a bag,
6 and handed it over to Detective DiBeneditto of our ballistics
7 section.

8 Q. Is that Jim DiBeneditto?

9 A. Yes.

10 Q. Was any other bullet fragments or bullet or parts
11 of a bullet recovered at the scene of the shooting?

12 A. No.

13 Q. Was the area searched for other bullets or bullet
14 fragments?

15 A. Yes.

16 Q. How?

17 A. With a metal detector with a rake along the curb
18 line and surrounding grass area and visually by eye with a
19 flashlight.

20 Q. What was the result?

21 A. It was negative.

22 MR. HAYDEN: May I please have People's 26 for
23 identification shown to the witness.

24 THE COURT: Yes.

25 THE COURT OFFICER: The witness has 26 for

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1 identification.

2 Q. Please take a look at the contents of that clear
3 plastic bag?

4 A. Yes.

5 Q. Do you recognize anything?

6 A. Item number 1 in the bag, a copper jacketing.

7 Q. Does that appear to be the copper jacket that you
8 recovered there at the scene of the shooting?

9 A. Yes.

10 Q. Does that appear to be the clear plastic box in
11 which you placed that copper jacket?

12 A. The box is not up here. There is just the bag in
13 here. It's not in the box I packaged it in. It's not.
14 Here:

15 Q. Do you see the bag in which you placed it in?

16 A. No.

17 Q. Could I see that for a moment.

18 What you see is basically just what appears to be the
19 copper jacket?

20 A. Yes.

21 Q. Was any DNA fingerprint or other forensic evidence
22 recovered at the scene of the murder?

23 A. No.

24 Q. Did you eventually examine the Infiniti?

25 A. Yes, I did.

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1 Q. Where did you do that?

2 A. At our Nassau County Police Highway Patrol building
3 leaked at 1255 Newbridge Road in North Bellmore.

4 Q. Did you remove material from the outside of the
5 Infiniti rear window?

6 A. Yes, I did.

7 Q. Describe that material?

8 A. It was possible human tissue, reddish color.

9 Q. Was that material eventually submitted for DNA
10 analysis?

11 A. Yes.

12 Q. What was the result?

13 A. Came back to Bobby Calabrese.

14 Q. Did you examine the outside of the Infiniti for
15 fingerprints?

16 A. Yes, I did.

17 Q. Did that include the door handles?

18 A. Door handles, windows, body passages.

19 Q. What was the ultimate results?

20 A. That was negative also.

21 Q. No identifiable fingerprint?

22 A. That's correct.

23 Q. Did you recover a wallet from inside the Infiniti?

24 A. Yes.

25 Q. Where was the wallet?

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1 A. The front seat console area.

2 Q. Describe the contents of the wallet?

3 A. Personal papers, driver's license and approximately
4 \$39. The papers and license were Bobby Calabrese's.

5 Q. Did you recover any kind of weapon from inside the
6 Infiniti?

7 A. No, I did not.

8 Q. Did you search the inside of the Infiniti?

9 A. Yes, I did.

10 Q. Nothing?

11 A. No:

12 Q. Did you help generate a computerized sketch of the
13 murder scene?

14 A. Yes.

15 Q. Is the sketch based on your measurements?

16 A. That's correct.

17 Q. Has the sketch been enlarged and mounted?

18 A. Yes.

19 MR. HAYDEN: May I please have 27 for
20 identification shown to the witness, Your Honor.

21 Q. Do you recognize that?

22 A. Yes, I do.

23 Q. What is it?

24 A. That is a sketch of the scene that has been
25 generated and enlarged based on my measurements.

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1 Q. Is that based on your measurements?

2 A. That's correct.

3 Q. Is that a fair and accurate representation of the
4 road and building configuration as it was back on the night
5 of Friday, December 3, 2004?

6 A. Yes.

7 MR. HAYDEN: The People offer that into
8 evidence, Your Honor.

9 MR. LEMKE: No objection. We have seen it.
10 Thank you.

11 THE COURT: Mark it in evidence.

12 THE COURT OFFICER: People's 27 marked in
13 evidence.

14 THE COURT: While that is being marked,
15 counsel, approach, please.

16 (Whereupon, there was a bench conference held off
17 the record.)

18 THE COURT: 27 has been marked in evidence is.

19 MR. HAYDEN: May I display this to the jury,
20 please.

21 THE COURT: Yes.

22 Q. Detective, please step down and describe for the
23 jury what this depicts?

24 A. This is a map showing Broadway, place of the
25 murder, and the surrounding blocks and buildings. This is

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1 the 7-Eleven that has been mentioned. Austin Boulevard, the
2 main thoroughfare, which is running northeast. Georgia
3 Avenue comes in at the top here, and Broadway coming down.
4 This is south. That is north. This is Bobby's Infiniti
5 parked here at the east side curb line. This figure here is
6 Bobby's body lying in the roadway. Number one is a lighter
7 which was recovered in the vicinity of Bobby's body. Number
8 two and number three are cigarettes butts which were also
9 recovered at the scene in the vicinity of the vehicle and
10 Bobby's body.

11 Q. You say that number one is a cigarette lighter?

12 A. Yes.

13 Q. Was that submitted to the latent fingerprint unit
14 for analysis?

15 A. Yes.

16 Q. What was the result?

17 A. It was negative results.

18 Q. No identifiable latent fingerprint?

19 A. That's correct.

20 Q. Each of those two cigarettes butts which you
21 designated as two and three, were each of those submitted for
22 DNA analysis?

23 A. Yes, sir, they were.

24 Q. What was the result?

25 A. They were also negative.

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1 Q. Please take the witness box.

2 Did you videotape the scene of the murder?

3 A. Yes, I did.

4 Q. Have you seen and marked a copy of that videotape?

5 A. Yes.

6 Q. How did you mark it?

7 A. My initials and the date.

8 MR. HAYDEN: May I please have 28 for
9 identification shown to the witness, Your Honor.

10 THE COURT: Yes.

11 Q. Do you recognize that?

12 A. Yes.

13 Q. Is that your videotape of the scene of the murder?

14 A. Yes.

15 Q. Is that videotape a fair and accurate
16 representation of the way that murder scene appeared while
17 you were there that Friday night?

18 A. That's correct.

19 MR. HAYDEN: People offer that in evidence,
20 Your Honor.

21 MR. LEMKE: We have seen it. No objection.

22 THE COURT: Okay. Mark it in evidence.

23 MR. HAYDEN: May we take a brief break, Your
24 Honor?

25 THE COURT: The Court will stand in recess for

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1 five minutes, ladies and gentlemen. Same admonitions
2 apply. Do not discuss the case among yourselves.

3 Take a brief five minute recess. Okay.

4 (Whereupon, the following takes place outside
5 the presence of the jury.)

6 THE COURT: You may step down.

7 Take a five minute recess.

8 (Whereupon, there was a recess in the proceedings.)

9 THE COURT OFFICER: Ready for the jury, Your
10 Honor.

11 THE COURT: Yes.

12 THE COURT OFFICER: Jury entering.

13 THE COURT OFFICER: Those jurors taking notes
14 make sure you have the right book. Let's make sure your
15 numbers correspond.

16 A JUROR: I don't have mine.

17 THE CLERK: Continued case on trial, 167N-05,
18 People against Mark Orlando.

19 People ready?

20 MR. HAYDEN: People ready, Your Honor.

21 THE CLERK: Defendant ready?

22 MR. LEMKE: Yes.

23 MR. LEMKE: Defendant ready, Your Honor.

24 THE CLERK: Let the record reflect the
25 presence of the defendant, the sworn jurors and the

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1 alternates.

2 THE COURT: Okay. Mr. Hayden, you can
3 continue. Thank you.

4 MR. HAYDEN: Yes, Your Honor.

5 With the Court's permission, I'd like to play the
6 videotape for the jury and have the detective step down
7 and narrate for them.

8 THE COURT: Yes, you may step down.

9 A. Title sheet to the video stating my name, the date
10 and location. South on Broadway, surrounding area showing
11 the commercial type of area, Infiniti on the east side.
12 Broadway. Started out at a distance to show the whole area,
13 then we come in with the video camera and pick up on the key
14 points, any type of crime scene.

15 I am moving in on the vehicle which is running with the
16 lights on, Bobby's body in the roadway. Another vehicle
17 which had been parked on the other side of the roadway and
18 the Cadillac behind it. Showing the sides, the front of the
19 vehicle, the plate to identify the car. Surrounding area,
20 condition of the vehicle, you see the exhaust coming up,
21 Bobby's body in proximity to the vehicle to the southwest of
22 the vehicle. Bobby's arms up above his head, face down in
23 the roadway. Cut sweat shirt. Blood in the roadway. Injury
24 to the back of his head.

25 Again, his arm up, blood in the roadway coming from his

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1 body. See the sweat shirt blowing around because of the wind
2 that night. Lighter that is mentioned in the proximity of
3 the body. All over his body on the left side. Again the
4 injury to the back of his head. Showing the proximity of him
5 to the rear of vehicle, rear plate on the vehicle. See the
6 exhaust, car is left running.

7 Surrounding area, curb line, the grass, and the fence
8 line. Looking west across Broadway from the east curb line.

9 Again we're illuminating the scene with a hand held light
10 video calm and the light truck down the block due to the fact
11 there is poor lighting on that roadway.

12 Another vehicle that was pulled up on the west side of
13 the roadway. This is just showing a tire print in the mud on
14 the west curb line of the roadway. Just looking north
15 Broadway, left side of his vehicle. Again the Cadillac which
16 was further down the roadway behind his vehicle on an east
17 curb line. Overall roadway showing what is around.

18 That is it.

19 MR. HAYDEN: May I proceed?

20 THE COURT: Yes, Mr. Hayden.

21 Q. Are you familiar with the term cell site tower?

22 A. Yes.

23 Q. What is a cell site tower?

24 A. It's a tower that's used to receive and relay cell
25 phone signals.

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1 Q. Where was the closest cell site tower to the scene
2 of the murder?

3 A. It was approximately a quarter mile north of that
4 location, north of Georgia Avenue.

5 Q. Has a geographic information system map been
6 generated depicting the vicinity of the murder?

7 A. Yes.

8 Q. It's location within Nassau County?

9 A. Yes. Correct.

10 Q. What do you mean by a geographic information system
11 map?

12 A. It's basically a satellite photo showing the
13 geography of a certain area.

14 MR. HAYDEN: Your Honor, may I please have 29
15 for identification shown to the witness.

16 THE COURT: Yes.

17 Q. Do you recognize that?

18 A. Yes, I do.

19 Q. What is it?

20 A. That is a GIS satellite map that was generated and
21 enlarged.

22 Q. In conjunction with this investigation?

23 A. Correct.

24 Q. Is that map a fair and accurate depiction of the
25 layout area, road and building configuration in the vicinity

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1 of the murder as it was that Friday night, December 3, 2004?

2 A. Yes.

3 MR. HAYDEN: The People offer that in
4 evidence, Your Honor.

5 MR. LEMKE: No objection, Your Honor. We have
6 seen it.

7 THE COURT: People's 29 in evidence.

8 THE COURT OFFICER: People's 29 marked in
9 evidence.

10 MR. HAYDEN: With the Court's permission, may
11 I display this to the jury and have Detective Nystrom
12 describe what it depicts.

13 THE COURT: Would you like the detective to
14 step down.

15 MR. HAYDEN: Please.

16 A. This is the satellite photo showing the Island
17 Park;, North Long Beach area, Long Beach, and Meadowbrook
18 Parkway, Wantagh Parkway. This is the place of, this is the
19 location of the murder where the yellow pointing in, coming
20 down. This is Austin Boulevard which comes across into Long
21 Beach, Park Avenue, Lido Boulevard, which leads to the Loop
22 Parkway which comes into Meadowbrook Parkway, and goes down
23 into Jones Beach area, and then the Wantagh Parkway, Loop
24 Channel Bridge under construction right now. Wantagh Parkway
25 coming up to Sunrise Highway in the vicinity of CitiBank and

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1 Wantagh Suzuki dealership. They're both on Sunrise Highway.

2 Q. Did you determine mileage between points designated
3 on that Geographic Information System Map?

4 A. Yes, I did.

5 Q. Tell the jury how you did that?

6 A. In a crime seen department vehicle, vehicle 1001, I
7 clocked it from the place of occurrence down that route I
8 just described.

9 Q. When did you drive from one designated point to
10 another?

11 A. It was a Saturday, around noontime.

12 Q. Describe the traffic then?

13 A. Traffic was moderate.

14 Q. Describe your speed?

15 A. Speed varied from 30 to 35, depending on the speed
16 limit on the roadway and the traffic as well.

17 Q. Where did you begin driving?

18 A. Started on Broadway by the 7-Eleven at the place of
19 the murder.

20 Q. Where did you finish?

21 A. Drove up Georgia Avenue and finished up by a
22 Wantagh CitiBank on Sunrise Highway in Wantagh.

23 Q. Describe the route you took?

24 A. Went north on Broadway to Georgia Avenue, made a
25 left on Georgia, left, right onto Austin Boulevard, as you

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1 saw on the smaller map it's just a, two left turns. Came
2 down Austin Boulevard over into Long Beach onto Park Avenue.
3 Made a left onto Park Avenue, traveled on Ludy Road, all the
4 way to the Loop Parkway north. Then east on the Loop Parkway
5 to the Meadowbrook, came down on the Meadowbrook down to
6 Jones Beach, continued to the water tower on Jones Beach, and
7 continued up Wantagh Parkway, over the bridge up to Sunrise
8 Highway. Got off the exit eastbound on Sunrise Highway.

9 Q. How many miles between the scene of the murder and
10 the Loop Channel Bridge?

11 A. Thirteen miles.

12 Q. How long did it take you to get there?

13 A. Twenty-one minutes.

14 Q. How many miles between the scene of the murder and
15 the Sunrise Highway exit for the Wantagh Parkway?

16 A. 17/4 miles.

17 Q. How long did it take you to get there?

18 A. That took just under twenty-six minutes.

19 Q. How many miles between the scene of the murder and
20 the Wantagh CitiBank branch on Sunrise Highway?

21 A. That was 17.6 miles.

22 Q. How long did it take you to get there?

23 A. Twenty-seven minutes.

24 Q. How about the Wantagh Suzuki?

25 A. That is just before the CitiBank. That was

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1 twenty-six minutes, seventeen and-a-half miles.

2 Q. Please retake the witness stand.

3 Were aerial photographs taken of the scene of the murder
4 and the surrounding area?

5 A. Yes.

6 Q. Have you seen those aerial photographs?

7 A. Yes.

8 Q. Have they been mounted for courtroom display?

9 A. Yes.

10 Q. Are the photographs fair and accurate
11 representations of the roads, buildings, land and see
12 configuration as they were in the vicinity of the murder that
13 Friday night, December 3, 2004?

14 A. Yes, they are.

15 MR. HAYDEN: Your Honor, may I please have
16 these five photographs which have been marked 30, 31,
17 32, 33 and 34 shown to the witness, please.

18 THE COURT: Yes.

19 THE COURT OFFICER: The witness has People's
20 30 to 34 for identification.

21 Q. Do you recognize those?

22 A. Yes, I do.

23 Q. Are those the five mounted aerial photographs about
24 which you just testified?

25 A. Correct.

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1 MR. HAYDEN: The People offer those in
2 evidence.

3 MR. LEMKE: No objection, Your Honor. We have
4 seen them.

5 THE COURT: Mark them into evidence 30, 31,
6 32, 33 and 34.

7 THE COURT OFFICER: People's exhibit 30, 31,
8 32, 33 and 34 have been marked in evidence.

9 MR. HAYDEN: May I have those returned to the
10 witness, Your Honor?

11 THE COURT: Yes.

12 MR. HAYDEN: May I please have yellow markers
13 given to the detective?

14 THE COURT: Yes.

15 Q. Detective, using those markings that have just been
16 given to you, some of which designate a scene, would you
17 please place a marker on each one of those photographs
18 showing the jury where the scene is with relation to the
19 photograph?

20 A. Yes.

21 Q. Does one of those photographs depict the nearest
22 cell site tower to the vicinity of the murder?

23 A. Yes.

24 Q. One of those markers has been designated cell site
25 tower. Do you see that?

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1 A. Yes, I do.

2 Q. Would you please place that in the vicinity of the
3 cell site on that photograph?

4 A. Okay.

5 THE COURT: Could you for the record tell us
6 what photograph that is from the back.

7 THE COURT OFFICER: People's 32 in evidence.

8 THE COURT: People's 32. Thank you.

9 MR. HAYDEN: Your Honor, may I display those
10 photographs to the jury and have Detective Nystrom step
11 down and describe what each depicts.

12 THE COURT: Yes.

13 Q. I am now placing 30 on the presenter.

14 Would you describe for the jury that?

15 A. That is an aerial photo of the scene of the
16 murder. The yellow dot is marking the scene of the murder on
17 Broadway. To my right is the northerly direction. To my
18 left is a south direction. We're looking west across
19 Broadway and Austin Boulevard. This is the main roadway.
20 Austin boulevard which runs north/south. This is Georgia
21 Avenue coming off of Austin Boulevard. This is Broadway
22 going south/north. This is 7-Eleven in the vicinity of the
23 murder. The boat yard which I described in the video. And
24 the yellow dot again where Bobby's car was parked on the east
25 side which is this side of the roadway facing north.

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1 Q. I am now placing 31 on the presenter.

2 Describe that, please?

3 A. Another angle of the same location looking
4 eastbound. Again, Austin Boulevard, this is north, that is
5 east, that is south. The scene of the murder on Broadway,
6 Georgia Avenue, intersects with Austin Boulevard and
7 Broadway. Again the boat yard and the 7-Eleven store.

8 Q. I am now placing 32 on the presenter.

9 Describe what that depicts?

10 A. This is an aerial photo looking south to the
11 location of the murder which is marked by this yellow dot.
12 That is Broadway which is running here. Austin Boulevard
13 here. See the water here, the boat yards are, dot on the
14 left of that yellow dot and right here, what this yellow dot
15 is the marked cell tower that was just mentioned.

16 Q. I am now placing 33 on the presenter.

17 A. This aerial photo is looking northbound towards the
18 scene up Austin Boulevard, Broadway is right here, 7-Eleven
19 store you can see in the photo. And again the yellow dot is
20 the scene of the murder, and the sell tower is located in
21 this green area just north of the murder scene.

22 Q. I am now placing 34 on the presenter.

23 A. Again, an aerial photo looking northeast, same,
24 little more northeast. This is showing the railroad, Austin
25 Boulevard, Broadway again runs here. This is the location of

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1 the murder. The boat yards are to the yellow dot's right.
2 And the cell tower is north of that yellow dot.

3 Q. Please retake the witness box.

4 MR. HAYDEN: May I please have 35 for
5 identification shown to the witness?

6 THE COURT: Yes.

7 THE COURT OFFICER: The witness has 35 for
8 identification.

9 Q. Do you recognize the contents of that clear plastic
10 bag?

11 A. Yes, I do.

12 Q. Do those contents include the sweat shirt you saw
13 Bobby Calabrese wearing when you observed him that Friday
14 night?

15 A. Yes.

16 MR. HAYDEN: May I please have this clear
17 plastic bag marked 53 for identification shown to the
18 witness.

19 THE COURT OFFICER: The witness has 53 for
20 identification.

21 Q. Do you recognize some of the contents of that clear
22 plastic bag?

23 A. Yes, I do.

24 Q. Do the contents you recognize include the plastic
25 box you use to contain that copper jacket?

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1 A. Yes.

2 Q. Do those contents also include the paper bag, the
3 brown paper bag you used to contain the clear plastic box
4 with the copper jacket before you gave it to Detective
5 DeBeneditto?

6 A. Yes.

7 MR. HAYDEN: Nothing further at this time,
8 Your Honor. Thank you.

9 THE COURT: Thank you.

10 MR. LEMKE: May I, Your Honor?

11 THE COURT: Yes, Mr. Lemke.

12 MR. LEMKE: Thank you.

13 CROSS EXAMINATION

14 BY MR. LEMKE:

15 Q. Detective, I take it you're fully familiar with the
16 area of Island Park?

17 A. Fully familiar meaning all the road ways.

18 Q. Regarding Austin and Broadway?

19 A. In that vicinity of the murder, yes.

20 Q. Okay. On December 3, 2004, you were involved with
21 an investigation; is that correct?

22 A. Yes.

23 Q. And, as part of your investigation I take it you're
24 either contacted or dispatched to respond to a particular
25 scene; isn't that correct?

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1 A. That's correct.

2 Q. And there came a point in time at about nine
3 o'clock, nine p.m., you arrived on South Broadway?

4 A. No, that is not correct.

5 Q. What time did you arrive there?

6 A. The office was contacted, the arrival time was
7 about 10:22.

8 Q. Okay. So, at about 10:22 which would be 10:22 that
9 night?

10 A. That night.

11 Q. All right. Now, when did you first receive the
12 phone call?

13 A. The office took the phone call around nine
14 o'clock.

15 Q. You arrived over an hour and-a-half later?

16 A. Yes.

17 Q. When you arrive at about hour and-a-half later
18 there already had been at least ten to twelve other officers
19 or emergency personnel, correct?

20 A. That's correct.

21 Q. When you had arrived, were you alone in your
22 vehicle?

23 A. No, I wasn't.

24 Q. Who was with you?

25 A. Detective Mike Fannin (phon.).

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1 Q. Detective Fannin was with you?

2 A. Yes.

3 Q. When you had arrived, are you part of the Crime
4 Scene Search Unit?

5 A. Yes.

6 Q. So, when you arrive you basically have a, I think a
7 van with various equipment in it, correct?

8 A. That's correct.

9 Q. Including overhead lights, correct?

10 A. Yes.

11 Q. And anything else that may be necessary in
12 collecting any type of evidence which may assist in the
13 investigation to determine what caused the death of, in this
14 case, Mr. Calabrese; isn't that correct?

15 A. Yes.

16 Q. When you had arrived, I would probably think that
17 some of the area was cordoned off, correct?

18 A. A ha, yes.

19 Q. Probably not with the crime scene tape or had that
20 been cordoned off when you got there?

21 A. It was cordoned off.

22 Q. When you had gotten there, you also have video
23 equipment, correct?

24 A. Correct.

25 Q. And, the location that you saw Mr. Calabrese was on

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1 the west side of South Broadway; is that correct?

2 A. No, his vehicle was on the east side of Broadway.

3 Q. I am sorry. The east side, correct?

4 A. Yes.

5 Q. Facing?

6 A. North.

7 Q. North?

8 A. Correct.

9 Q. And, Mr. Calabrese was laying face down, correct?

10 A. Yes.

11 Q. South of his vehicle, correct?

12 A. Correct.

13 Q. And, this was on South Broadway, correct?

14 A. Correct.

15 Q. And, Austin Boulevard is to the west?

16 A. Yes.

17 Q. And Austin Boulevard runs what directions?

18 A. Basically north/south direction.

19 Q. And, I believe you testified already regarding what
20 is depicted in I believe this is People's 27 in evidence; is
21 that correct, detective?

22 A. Yes.

23 Q. And, this was a sketch that was generated by
24 yourself, correct?

25 A. Yes.

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1 Q. And, in this depiction, can you see it from where
2 you're sitting?

3 A. Yes, I can.

4 Q. We have Austin Boulevard, correct?

5 A. In the orange.

6 Q. In the orange. That is a main thoroughfare, isn't
7 that?

8 A. Yes.

9 Q. Is it, it runs north and south, correct?

10 A. Yes.

11 Q. And where does it -- it runs south. Where does it
12 go to?

13 A. Down to Long Beach.

14 Q. Does it go along any bridge down in Long Beach?

15 A. Yes, it goes over the Long Beach Bridge into Long
16 Beach.

17 Q. There are other ways to get into Long Beach from
18 that location other than taking Austin Boulevard?

19 A. I am not that familiar with all the roadways around
20 there.

21 Q. Well, there is water, you got to go over some form
22 of some bridge?

23 A. Yes.

24 Q. In fact, there's another exhibit in evidence which
25 has also been marked, as People's 29 in evidence. I think

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1 you had indicated you're familiar with this as well, correct?

2 A. Yes.

3 Q. And, People's 29 in evidence also depicts Broadway,
4 correct?

5 A. The arrow is pointing to the approximate location,
6 place of occurrence.

7 Q. Okay. That would be POO, place of occurrence,
8 Broadway?

9 A. Yes.

10 Q. And, so this, is this map, would be as you say
11 accurate as to how you would get into Long Beach, correct?

12 A. Yes.

13 Q. Which would indicate basically one bridge, correct?

14 A. Yes.

15 Q. That is Austin Boulevard, that runs down, correct?

16 A. That's correct.

17 Q. So clearly a main thoroughfare, correct?

18 A. Yes.

19 Q. And, that Austin Boulevard is, as it runs north/
20 south, in relation to south and north Broadway, which also
21 runs north and south; correct?

22 A. Yes.

23 Q. And, in the photographs, depicted in evidence,
24 People's 31, this is Austin Boulevard clearly depicted,
25 correct?

Nystrom - People - Cross

1 A. I can't see from here what you're pointing at.

2 Q. I am sorry. If the detective can be shown?

3 THE COURT OFFICER: The witness has People's
4 exhibit 31.

5 Q. That is Austin?

6 A. Wider roadway in the picture.

7 Q. Two lanes going north and two lanes going south?

8 A. Yes.

9 Q. Coming across is the 7-Eleven. That is there,
10 correct?

11 A. 7-Eleven right by that yellow dot.

12 Q. And that road just north is Georgia, isn't it?

13 A. Yes.

14 Q. On South Broadway, that runs north/south, how far
15 south does that run from that location?

16 A. How far south does, does South Broadway run from
17 the yellow dot?

18 Q. Yes.

19 A. Probably a couple of blocks. I don't know. I
20 didn't drive down that way.

21 Q. You didn't drive down that way; is that what you're
22 saying?

23 A. I didn't drive the roadway. I didn't measure the
24 roadway.

25 Q. Isn't it true that on South Broadway, if you go

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1 south, it only goes about two and-a-half more blocks and it's
2 a dead end; isn't that correct?

3 A. It might be, like I said, I am not familiar with
4 all the roads in that area. Just the scene of this location,
5 of the murder.

6 Q. You just testified where the satellite station is
7 located, the cell site, correct?

8 A. Yes.

9 Q. You've done your investigation to determine that if
10 somebody used a cell phone you'd be able to determine whether
11 that cell phone was used within a geographical area; isn't
12 that correct?

13 A. I didn't testify to that. I just testified to the
14 location of the cell tower.

15 Q. Okay. So, you don't know the significance of that
16 yet; is that it?

17 A. Correct. That is not my -- like I said, I just
18 testified to the location of the tower in reference to the
19 murder scene.

20 Q. Yes. As far you know, perhaps you don't know, that
21 the significance is that somebody was using a cell phone,
22 okay, that can be shown by the location of a cell site tower;
23 isn't that correct?

24 A. I don't know. That is not my specialty. I am not
25 familiar with how you can determine the usage of a cell phone

Nystrom - People - Cross

1 in reference to a tower.

2 Q. You were just told to go out and find out how to
3 get to the cell tower?

4 A. I was told to locate the tower.

5 Q. Right?

6 A. In reference to the murder scene.

7 Q. When you had arrived at the murder scene and you're
8 now videotaping it, you weren't present when this sweat shirt
9 was cut, correct?

10 A. No, I wasn't.

11 Q. You don't know how it appeared to the first officer
12 or the first person that saw that, correct?

13 A. No, I don't.

14 Q. And, in fact, did you talk to the person that night
15 who cut the sweat shirt?

16 A. No, I didn't.

17 Q. Did you make any notations regarding that sweat
18 shirt being cut?

19 A. Did I make any notations in my paperwork that it
20 was cut?

21 Q. Yes.

22 A. It was noted just through photography and video.

23 Q. You didn't talk to anybody who had cut that?

24 A. Did I talk to anybody that cut that, no.

25 Q. When you also had arrived, there's a 7-Eleven which

Nystrom - People - Cross

1 has, from the vehicle, from Mr. Calabrese, about fifty feet
2 up, is a seven 7-Eleven; isn't that true?

3 A. Yes.

4 Q. That 7-Eleven, so the jury's not confused, that is
5 a 7-Eleven?

6 A. Yes.

7 Q. On December 3, 2004, at 8:30 at night, that
8 7-Eleven was open, wasn't it?

9 A. Yes, it was.

10 Q. Sells beer in that 7-Eleven, doesn't it?

11 A. Yes.

12 Q. Sells a number of things, correct?

13 A. Yes, that's correct.

14 Q. And, in fact, that 7-Eleven, when you pull out,
15 which is in People's 30 in evidence, you can come right out
16 onto Broadway, can't you?

17 A. That's correct.

18 Q. And if you come right out onto Broadway and, in
19 fact -- withdrawn.

20 If you're even standing in that parking lot of 7-Eleven
21 you can see Mr. Calabrese's car fifty feet away, correct?

22 A. I would imagine if you're looking in that
23 direction, you would see it.

24 Q. Okay. In fact, from where you're sitting now to
25 the back wall, how many feet in your estimation would that

Nystrom - People - Cross

1 be?

2 A. Probably about fifty.

3 Q. From the parking lot of 7-Eleven which is open
4 twenty-four hours?

5 A. From the back end of 7-Eleven is probably fifty
6 feet to the location of the murder.

7 Q. Which is between this wall and you, correct?

8 A. Yes.

9 Q. Clearly, you can see that location, correct?

10 A. With proper lighting, yes.

11 Q. Certainly-Eleven was open. There was lighting in
12 that parking lot, correct?

13 A. In the parking lot, yes.

14 Q. On South Broadway, it's your testimony that you
15 didn't go further down -- withdrawn.

16 If you know, further down South Broadway, there's marinas
17 to the east; isn't that correct?

18 A. Yes.

19 Q. And, there's one or two industrial buildings there,
20 correct?

21 A. On the west hand side.

22 Q. On the west hand side?

23 A. Yes.

24 Q. Correct?

25 A. Yes.

Nystrom - People - Cross

1 Q. No other residences down there, correct?

2 A. Further down, a block or so, there is residential
3 housing on the east side of Broadway.

4 Q. Okay. In fact, certainly that area is more
5 desolate, more -- well, that is withdrawn.

6 That area is certainly darker, isn't it?

7 A. Than?

8 Q. There's nothing open? There's no establishments
9 open down in that area, correct?

10 A. That's correct.

11 Q. Now, you get to the scene. You videotape what you
12 observe and you, in fact, I don't know, maybe, you testified
13 at some point, you turned over Mr. Calabrese, didn't you?

14 A. The medical examiner did.

15 Q. You were present, correct?

16 A. Yes.

17 Q. And isn't it correct that when Mr. Calabrese was
18 turned over that there was a bullet fragment in the sweat
19 shirt?

20 Isn't that correct?

21 A. There was a jacketing, copper jacketing that was
22 recovered at the scene when he was turned over.

23 Q. After he was turned over?

24 A. Yes.

25 Q. It was underneath him, correct?

Nystrom - People - Cross

1 A. Yes.

2 Q. And, that copper jacket, so the jury is familiar,
3 that, in the operation of a weapon, that copper jacket gets
4 kicked up through the chamber, correct?

5 A. No.

6 Q. How does that get kicked out?

7 A. Pardon me.

8 Q. That copper jacket, talking about the bullet
9 fragment?

10 MR. HAYDEN: Objection. That presumes it gets
11 kicked out which of course it doesn't.

12 THE COURT: Sustained.

13 Q. You're familiar with weapons, correct?

14 A. Yes.

15 Q. The copper fragment, it's a casing; isn't that
16 correct?

17 A. No.

18 Q. What is it?

19 A. It's a jacketing to the lead bullet. The lead core
20 bullet casing is a different piece of the overall cartridge.

21 Q. So, you're describing the, so the jury's, as well,
22 clear, as I am, okay, what you're describing then would it be
23 the bullet?

24 A. It's part of the bullet. The bullet is a lead core
25 with a copper jacketing which is the whole projectile which

Nystrom - People - Cross

1 gets ejected from the casing.

2 Q. All right. So the projectile, call it a bullet?

3 A. Yes.

4 Q. The bullet that's discharged from the gun, right,
5 the bullet was found underneath him, correct?

6 A. The bullet casing, not the full bullet.

7 Q. You keep saying the casing. I don't want there to
8 be any confusion.

9 A. I am sorry. You mentioned casing before, the
10 jacketing.

11 Q. Okay. When you say jacket, explain to the jury?

12 A. I did. It's a lead core with a copper jacketing.
13 That is the whole projectile.

14 Q. Okay. Which is shot, and the casing is which holds
15 the gun powder and that is not ejected from the gun?

16 A. Right.

17 Q. So, the casing itself would be found in the weapon,
18 depending on what weapon it is, if it's an automatic it could
19 be kicked out, but what was found underneath Mr. Calabrese
20 was clearly what was shot from the barrel of the gun.

21 That is all I am getting at. Correct?

22 A. Correct.

23 Q. And it wasn't found until the medical examiner was
24 there and he was turned over?

25 A. Yes.

Nystrom - People - Cross

1 Q. There was only one such bullet; isn't that correct?

2 A. Found at the scene?

3 Q. Yes.

4 A. Yes.

5 Q. Now, just one or two other questions.

6 I think you also said it was a cold night, cold and
7 windy?

8 A. Correct.

9 Q. And, you didn't, I think you indicated, you went
10 into Mr. Calabrese's car; is that correct?

11 A. After the car was removed from the scene and
12 secured in our highway building in North Bellmore.

13 Q. Went through it, correct?

14 A. Yes.

15 Q. There was no jacket found in that car, correct? A
16 jacket that you wear?

17 A. Like a coat jacket.

18 Q. Yes.

19 A. Heavy coat jacket.

20 Q. Nothing, right?

21 A. No.

22 MR. LEMKE: Okay. Thank you, detective.

23 THE COURT: Thank you, Mr. Lemke.

24 Mr. Hayden.

25 MR. HAYDEN: Just briefly, Your Honor.

Nystrom - People - Redirect

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MR. HAYDEN:

4 Q. Detective, counsel asked you during cross
5 examination about lighting in the vicinity of 7-Eleven. I
6 want to move away from 7-Eleven. I want to go back to where
7 the scene was.

8 Tell the jury what the lighting was like in the vicinity
9 of the Infiniti?

10 A. The Infiniti which was fifty feet south of the rear
11 of 7-Eleven the lighting was poor on the roadway.

12 Q. Was it dark?

13 A. Dark, yes.

14 Q. Would you step down for a moment, detective?

15 A. Yes.

16 Q. Counsel asked questions about would it be more
17 desolate south of the scene of the shooting; is that right?

18 A. Yes.

19 Q. Is there a cut through here between where the
20 Infiniti was and Austin Boulevard?

21 A. Yes.

22 Q. Is that cut through one of the quickest ways to get
23 out from Broadway onto Austin Boulevard?

24 A. From that particular scene, probably, yes.

25 Q. You cut directly behind 7-Eleven out onto Austin;

Nystrom - People - Redirect

1 is that right?

2 A. Yes.

3 THE COURT: What exhibit is that you're
4 addressing.

5 MR. HAYDEN: This is 30.

6 THE COURT: Thank you.

7 Q. Please retake the witness box.

8 At this point, Your Honor, I am going to offer 26 for
9 identification into evidence.

10 MR. LEMKE: No objection, Your Honor.

11 THE COURT: Mark it People's 26 in evidence.

12 THE COURT OFFICER: People's 26 marked in
13 evidence.

14 MR. HAYDEN: Thank you.

15 Q. Detective, have you ever been a member of the
16 firearms bureau?

17 A. No, I haven't.

18 Q. Do you have any expertise in the area of firearms
19 examination?

20 A. No, I don't.

21 Q. Cartridge examination? Anything like that?

22 A. No.

23 Q. Would you step down for a moment, please, in front
24 of the jury, with the Court's permission?

25 THE COURT: Of course.

Nystrom - People - Redirect

1 Q. Using 26 which is now in evidence, would you show
2 the jury what you mean by copper jackets and metal cores of
3 bullets?

4 A. Hard to see through the bag but when we talk about
5 copper jacketing, as you can see the difference in color, the
6 copper color of these, certain pieces, that is what encases
7 the lead core which are these deformed pieces. When the
8 bullet strikes something it deforms. It breaks it apart
9 depending on what it is. That is why we have numerous pieces
10 here. So, the lead core would go inside of these copper
11 jacketings, and that makes up the bullet.

12 Q. The idea being that the lead core would wear the
13 copper jacket just the way you wear a jacket?

14 A. Yes.

15 Q. Please retake the witness stand.

16 MR. HAYDEN: Nothing further, Your Honor.

17 RECROSS EXAMINATION

18 BY MR. LEMKE:

19 Q. Detective, somebody travelling on Austin Boulevard
20 and they go to cut through -- may I have People's 30 in
21 evidence. Great. Okay.

22 Detective, why don't you step down for a second and stand
23 in front of the jury, with the Court's permission, of
24 course.

25 THE COURT: Sure.

Nystrom - People - Recross

1 Q. Referring to People's 30, so the jury can see, this
2 7-Eleven is depicted in here; is that correct?

3 A. Yes.

4 Q. In fact, could you just point to that cut through,
5 please, for the jury?

6 A. Okay. I will just lay everything out in the photo
7 again so the jury understands what we're talking about.

8 The yellow dot again is the place of the murder,
9 Broadway, Austin Boulevard, Georgia Avenue. 7-Eleven store,
10 the parking lot in front of the 7-Eleven store, behind the
11 7-Eleven store is this cut through that goes from Austin
12 Boulevard to Broadway.

13 Q. This cut through, if somebody's travelling up
14 Austin and makes a right or comes down and makes a left and
15 through this cut through, you don't know the name of that
16 street, do you?

17 A. No.

18 Q. And comes out, they're actually coming out and now
19 what are you, ten, if you come across the street, you're
20 probably ten feet from where Mr. Calabrese is?

21 A. Very close, sir.

22 Q. Okay. Thank you. I have nothing further.

23 THE COURT: That is it?

24 MR. HAYDEN: Yes. Nothing further. Thank
25 you.

Proceedings

1 THE COURT: You may step down. Thank you.

2 (Witness excused.)

3 THE COURT: Ladies and gentlemen, please
4 remain seated while we let the jury go.

5 Ladies and gentlemen, I am going to give you the
6 admonitions as I told you when we take a break and I am
7 directing you to return at two p.m. Going to keep
8 moving and hopefully get a lot in this afternoon.

9 You must not converse among yourselves or with
10 anyone else upon any subject connected with the trial.
11 You must not read or listen to any accounts or
12 discussions of the case in the event it is reported by
13 the newspapers or other media. You must not visit or
14 view the premises or place where the offense charged was
15 allegedly committed, or any other premises or place
16 involved in the case. Prior to your being discharged,
17 you must not request, accept, agree to accept, or
18 discuss with any person the receiving or accepting of
19 any payment or benefit in consideration for the
20 supplying of any information concerning the trial. You
21 must promptly report to the Court any incident within
22 your knowledge involving an attempt by any person
23 improperly to influence any member of the jury. You
24 shall not access the Internet or Worldwide Web by any
25 means available to you for the purposes of either